

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

August 6, 2024

IN RE:

PETITION OF JACKSON SUSTAINABILITY
COOPERATIVE TO DETERMINE IF A
CERTIFICATE OF CONVENIENCE AND
NECESSITY IS NEEDED

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DOCKET NO.
21-00061

INITIAL ORDER GRANTING JACKSON SUSTAINABILITY COOPERATIVE’S MOTION TO DISMISS
WITH PREJUDICE

This matter is before the Administrative Judge¹ of the Tennessee Public Utility Commission (“Commission” or “TPUC”) for consideration of the *Applicant’s Motion to Dismiss Petition with Prejudice* (“JSC’s Motion to Dismiss”) filed by Jackson Sustainability Cooperative (“JSC”) on August 14, 2023.

RELEVANT BACKGROUND

On May 24, 2021, JSC filed its *Petition For a Solar Facility For Supplemental Energy* (“*Petition*”) indicating it had plans for the construction of a solar facility with a battery-energy storage and shared interconnection located in Jackson, Tennessee.² The *Petition* sought a determination that JSC is a non-utility, exempt from regulation by the Commission because it has identified itself as a non-profit cooperative under Tenn. Code Ann. § 65-4-101(6)(E).³ Intervenors, Tennessee Electric Cooperative Association (“TECA”) and Jackson Energy Authority (“JEA”), were partially granted their motions to compel and awarded reasonable attorney fees, and that Order was affirmed by the

¹ References to “Hearing Officer” have been changed to “Administrative Judge” consistent with a title change within the Commission pursuant to Tenn. Code Ann. § 4-5-102.

² *Petition*, p. 1 (May 24, 2021).

³ *Id.*

Commission in an Order issued May 8, 2023. Subsequently, TECA and JEA sought to hold John Beam III, Equitus Law Alliance, PLLC, and Dennis Emberling jointly and severally liable for the awarded attorney fees. On June 2, 2023, the Commission received Notice that JSC had declared bankruptcy. On August 14, 2023, Mr. Steve Lefkovitz, JSC's bankruptcy attorney, filed *JSC's Motion to Dismiss* on behalf of JSC. Dennis Emberling obtained independent counsel, and on October 30, 2023, filed the *Motion to Dismiss Pursuant to T.R.C.P. 12.02(1)(2)(4)(5) and 1220-01-02-.03(2)(a)(b)(c)(d)* ("*Emberling Motion to Dismiss*"). Oral argument on the *Emberling Motion to Dismiss* and the hearing to establish the amount of the attorney fees award were held on November 30, 2023. The *Emberling Motion to Dismiss* was denied. In addition, the Administrative Judge found that JSC was assessed sanctions payable to TECA in the amount of \$59,002.50 and to JEA in the amount of \$8,493.00 and declined to sanction Mr. Dennis Emberling or Mr. John Beam, III, individually.

***JSC's MOTION TO DISMISS* AND TECA'S RESPONSE**

JSC filed *JSC's Motion to Dismiss* on August 14, 2023. In *JSC's Motion to Dismiss*, JSC requests that its *Petition* be dismissed with prejudice. JSC states "the Applicant filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of Tennessee, case number 23-10645, on May 24, 2023."⁴

On August 21, 2023, TECA filed *Tennessee Electric Cooperative Association's Response to Jackson Sustainability Cooperative's Motion to Dismiss Petition with Prejudice* ("*TECA's Response*"). In *TECA's Response*, TECA stated "[w]ithout waiving or abandoning its claims for reasonable attorney's fees and expenses under Rule 37, TECA states that it does not object to this docket being dismissed with prejudice."⁵ However, TECA requested that the order dismissing the

⁴ *JSC's Motion to Dismiss*, p. 1 (August 14, 2023).

⁵ *TECA's Response*, pp. 1-2 (August 21, 2023).

petition with prejudice not be entered “until the proceedings regarding the reasonable attorney’s fees and expenses to be paid have concluded.”⁶

FINDINGS AND CONCLUSIONS

The Administrative Judge agreed that *JSC’s Motion to Dismiss* should not be considered until the Order was issued regarding the amount of attorney fees to be awarded to TECA and JEA. The *Administrative Judge’s Order Establishing Award of Reasonable Attorney Fees to TECA and JEA* was issued on May 30, 2024, and has since become a final order from which no party has sought judicial review. Based on the record in this docket, the Administrative Judge concludes that *JSC’s Motion to Dismiss* is well taken and should be **GRANTED**.

IT IS THEREFORE ORDERED THAT:

1. The *Applicant’s Motion to Dismiss Petition with Prejudice* filed by Jackson Sustainability Cooperative on August 14, 2023, is **GRANTED**.
2. Any party aggrieved by the Administrative Judge’s decision in this matter may file a Petition for Reconsideration or appeal of the Order with the Tennessee Public Utility Commission within fifteen (15) days from the date of this Order.
3. This Initial Order shall become a Final Order of the Tennessee Public Utility Commission, if no petition for reconsideration or appeal of this Order is filed prior to the expiration of the fifteen-day appeal period.
4. Any party aggrieved by the Tennessee Public Utility Commission’s decision in this matter has the right of judicial review by filing a for Review Petition in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.


Monica Smith-Ashford, Administrative Judge

⁶ *Id.* at 2.